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(Concluded from page 138)

Why, then, should we study the Classics?

(1) In general, because "they embody and present a story, a criticism, and an interpretation of an interesting development of social life that affords the best possible introduction to an intelligent appreciation of our own" (11). We are racially one with the Greeks and the Romans, and so of necessity more intimately interested in them than in any other race. There is, then, true genetic relationship almost everywhere between our own life and that of the Greeks and the Romans, and in consequence between us and the Greeks and the Romans a bond of immediate human relationship. These things together constitute the most natural ground for intellectual training, for culture, and for a live interest in the larger racial future. If an individual lacks these things, he cannot safely participate in the molding of our various institutions to meet the ever-varying practical demands of the day.

(2) Three-fourths of our English words had their origin in the struggles of the Greeks and the Romans for self-expression and social communication (11).

On the one hand they constitute the essential precipitates of the conditions they were originally invented to portray, together with additional experience embodied within them from age to age. They therefore constitute one of our most complete and reliable sources of information regarding the classic civilizations of Greece and Rome. On the other hand, as the medium of expression of our own poets, orators, essayists, scientists, historians, and great teachers of every kind, these words are used with deep consciousness of this historic development. If, therefore, we would fully comprehend the message of our own prophets of every age, we must ourselves be equally alive to the human experience embodied in the words they use,—a thing we can do most directly, thoroughly, and systematically by studying the original languages contributory to our own, together with the conditions out of which they grew. It is only by mastering our language, this great instrument of social communication, that we can even be intelligent followers and supporters of our own leaders; and only so, in turn, may we fit ourselves for conspicuous and satisfying leadership in any sphere through the words of our mouths or of our pens.

(3) Since the way of intellectual achievement lies more and more in criticism, rather than in original observation and induction, study of the Classics is the surest road to critical ability in any field where a literature of the subject exists. Here, as the following

quotation shows, Mr. Norris had much the same view (12) as that taken by Mr. Zane, the lawyer, as set forth in *THE CLASSICAL WEEKLY*, 8. 57-58.

In the first place, most of our modern philosophy and scientific theory was anticipated by classic myth and speculation, familiarity with which affords the best natural introduction to modern theory and thence to independent study. In the second place, by very reason of the part played by contrast in all intellectual life, criticism is the surest and most stimulating motivation to mental activity. But sound criticism as a basis for original contribution in any field implies a complete and intimate knowledge of the literature of that field, i.e., of the ideal series. And this in turn demands the ability patiently to search the scriptures with microscopic care for direct knowledge and indirect implication and inference. Scientific discovery and original contribution in whatever field are becoming more and more a matter of reading, weighing authorities, and searching for implications, than of original observation in the laboratory. Thus the power of patient, sustained, microscopic attention to the printed page, as being the necessary requisite to any kind of signal achievement, is one of the greatest social values an individual can possess; and it is better acquired as a mere by-product of intelligent study of the classics than from any other training. The secret of the acquisition of this power, aside from the direct gains of accurate vocabulary and range of mental experience, lies in the fact of the exceedingly numerous and minute contrasts of word forms and meanings and thought relations with which the student of the classics must constantly deal.

(4) With our new evolutionistic philosophy, we are in constant need of new knowledge of racial experience as indicated in facts heretofore overlooked or newly discovered, especially of the two great classical civilizations, for the reasons set forth so clearly in paragraph 4 of this summary (page 137, column 1). Only the classical scholar can discover new facts about the classical civilizations or revise, as may be needed, our interpretation of those facts, and so keep before us the most truthful and therefore most valuably suggestive contrast to our own civilization.

And with him, as products and by-products of the same training, we must have a long train of public spirited individuals to support him in his work,—of publishers, journalists, lecturers, and teachers to spread the results of his findings,—and finally the largest possible element of our body politic to appreciate the meaning that these old civilizations have for us.

As an illustration of the value of the Classics as affording a genetic view of an institution, Mr. Norris discusses American athletics and their relation to Greek

athletics, finding a link between the two in the revival of the Olympic games. One man, Mr. E. Norman Gardiner, a scholar, a master, in this field, has given us a book on Greek Athletic Sports and Festivals.

But the great un-Greeked mass of our population must take his word for every statement he makes. He cites his authorities; but their names and their statements also must be taken on faith. It is well that we can take other men's words for what we cannot verify for ourselves; but it would be a pretty unsatisfactory mental furnishing that was all of this nature, and would result in an equally faulty social equilibrium. The statements of fact in this book may in general be relied upon because the author is a careful, painstaking scholar and wrote in the full consciousness that his every assertion will be critically scanned by other scholars. But with all the learning embodied in this book, no person could become a master of the subject by learning verbatim every statement contained within it. Even if he knew Greek and committed to memory every statement of the original sources upon which the thesis is presented, and every argument and relation deduced from these sources, he could not speak with authority upon the subject. For he could not possibly have an authoritative knowledge of this special subject save against the background of a full and intimate knowledge of the whole range of Greek life and thought, which the author possesses.

To secure in each generation a few leaders in various domains, we must train several million youths. Since we know not in advance what any child will become, we must look on every boy as a possible president or senator, or the like. Intelligent democracy implies and demands intelligent criticism on the part of all its constituent individuals. Hence, in the end extra work bestowed in the training of those who fall behind in the race for president has not been lost; its results have all been appropriated and wrought into our social fabric. So, though not all who study the Classics study them to the end, the instruction bestowed on those who do not remain is not lost. Those who drop out may serve well the race, by taking up the discoveries of those who persist, and assimilating them into social thought and using them for the development of the race.

The contributions of Greece and Rome to a genetic view of our own experience have by no means all been made. We are daily learning new things about ancient life, many of which cause us to revise our interpretations of that life. Many a standard work on ancient life is in need of rewriting.

We need classical scholars to carry on all such work, teachers to start and prepare them, and the largest possible classically trained residue in our populace, that our social group as a whole may possess a large, cultural perspective of all varied interests, and that it may intelligently avail itself of the lessons of the past in the interest of our continued welfare and development (17).

The need of study of the Classics and instruction in the Classics will endure so long as there is a nation on earth to avail itself of the racial experience of the past as vantage ground for its further activity and development (17).

In conclusion, Professor Norris discusses the 'practical' value of the study of the Classics. To most persons, the word 'practical' covers the things for which there is an obvious and tangible economic demand.

But there is another, a larger practical. The supreme practical earthly thing is that society, the race, shall live and develop; that is, that it shall live by developing. It may well be that the classics bear a closer relation to this larger practical than to the economically practical. The philosopher and the student of the classics may be just as practical in their attitudes towards life and in their activities as may the book-keeper, the mechanic, or the engineer. Intelligence is the supreme function, and knowledge the supreme commodity in the racial economy. Nothing should be learned that is not practical; but no knowledge is impractical if acquired in right ways and associated in right relations. And the most valuable and expert knowledge may be impractical and vicious, as when a knowledge of chemistry is turned to the adulteration of foods and other commodities. Even if study of the classics bore no direct relation to mental efficiency outside its own field, yet this study and the resultant orientation are necessary to a genetic, cultural, critical knowledge of our own life,—a knowledge that is freighted with sensibility of the human experience by which our own racial progress has been achieved, a knowledge that raises all life beyond the halo of the dollar-mark, a knowledge organized upon the basis of its natural associations, and therefore most interesting, most easily acquired, most coherently organized, and most valuable socially.

The genetic, perspective, cultural view of all cosmic and human experience, specially illustrated by study of the classics, is the way of mental growth and scholarship. Classical study is for us of Anglo-Saxon civilization the main highway to critical ability whereby knowledge is extended and perfected, communicated and assimilated. And knowledge is the only sure means and safeguard in the endeavor after racial immortality, in which we of America may with greatest faith expect to share.

C. K.

THE PROSECUTION OF MILO

A CASE OF HOMICIDE, WITH A PLEA OF SELF-DEFENSE¹

The death of Publius Clodius occurred on January 18, 52 B. C., on the Appian Way². Clodius was on horseback, going in the direction of Rome, and was attended by about 30 armed men. At the same time, T. Annius Milo was traveling along the Appian Way, going from Rome, riding in a litter with his wife. He was attended by a few friends, and had about 300 followers in his retinue. It was later shown that the majority of these were women and children. The two parties met at Bovillae, about ten miles from Rome,

¹Our knowledge of the Roman criminal law on some of the subjects treated in this article is a matter of inference rather than of accurate citation in ancient sources. I have, therefore, inserted brief statements of the corresponding American Law, wherever it has seemed appropriate, or interesting. These are taken from the American and English Encyclopedia of Law, Second Edition (abbreviated A. E. E. L.), unless otherwise specified. Those who are legally curious will be interested to notice how closely Cicero's reasoning is in harmony with accepted doctrine in England and the United States on matters of self-defense, justifiable homicide, and confessions.

A. C. Clark's edition of Cicero's *Pro Milone*, including the Commentary of Asconius (abbreviated Asc.), has been used for citation and references.

²Asc. 32 : a. d. xiii Kal. Febr. There were 29 days in January, until Caesar's reform of the calendar.

and near the estate of Clodius. A quarrel arose among the followers of the two men, and blows were exchanged. From this point two conflicting accounts of the event afterward became current. One story was that the encounter arose through the abuse and provocation of two of the ruffians who were with Milo. Soon the parties came into active conflict, and in the struggle Clodius was wounded. The wounded man took refuge in a tavern by the roadside. Here he was discovered by Milo's men and at the order of Milo was dragged out and put to death. The other story was that an attack was made by Clodius on Milo's retinue, and that, in the midst of the struggle on the road, Clodius informed Milo's followers that Milo had been killed, hoping that when they heard this they would cease fighting, and probably take to flight. But the effect was just the opposite of what he had anticipated, for they were enraged when they heard that their master was killed, and took immediate revenge upon Clodius himself.

The body of Clodius was picked up on the roadside and brought to Rome³³. On the following day it was conveyed to the forum, and exposed to view upon the rostra³⁴, in order to arouse feeling against Milo. Soon the crowd carried the body into the senate-house, where furniture was piled about it, and a fire was started. The senate-house was completely burned, and neighboring buildings were damaged by fire. Next the crowd attacked the home of the *interrex*, presumably because he had not been sufficiently active in bringing about a settled condition that would have rendered the lawlessness of Milo impossible. Meanwhile Milo remained in concealment until he found that the excesses of the mob were turning the favor of many citizens from Clodius to himself. Thereupon he emerged from hiding and openly continued his canvass for the consulship. But mob-rule prevailed, and Milo's followers were constantly coming into conflict with those who sympathized with Clodius³⁵.

There were neither consuls nor praetors in Rome at the time, inasmuch as the annual elections, which should have been held at least four months earlier, had been postponed repeatedly on account of the prevailing anarchy³⁶. Tribunes had taken office in December as usual³⁷, but apart from these the only officials were the *triumviri capitales*³⁸, and the successive *interreges* who had been unable to restore order and to hold the elections. The majority of the tribunes were, naturally enough, in active sympathy with the friends of Clodius, and openly hostile to Milo. Clearly it was the duty of the *interrex* and of the senate to act immediately and vigorously. Two courses were open. The dictatorship, which had so long been in disfavor, might be revived, or the senate might pass its final decree and declare martial law. The *interrex* preferred the latter course, and the senate enacted the

senatus consultum ultimum, giving to the *interrex*, the tribunes, and Pompey authority to guard the state and see that it took no harm³⁹. Power was also given to Pompey to raise necessary levies through Italy⁴⁰. As it seemed impossible even now to hold elections, Bibulus moved in the senate (the motion was seconded by Cato) that Pompey be created sole consul. The motion prevailed; the result was announced by the *interrex*, Servius Sulpicius, and apparently it was simply by this vote of the senate that Pompey assumed the consulship⁴¹. This is the first instance recorded of a man holding the consulship without a colleague. It broke down utterly the principle of collegiality that seemed a fundamental characteristic of Roman republicanism⁴².

Pompey acted with commendable promptness. He introduced into the senate two bills which were intended to be of salutary influence in the disordered condition of the city. The first of these is the one that chiefly concerns the case of Milo and Clodius. It was a bill entitled *De Vi*, and had for its aim an investigation into the recent disturbances. The bill is said to have mentioned definitely the murder of Clodius, the burning of the senate-house and the attack on the home of the *interrex*⁴³. All these matters would ordinarily have been tried by the standing courts. However, the bill included the provision that a special commission should be formed, and that in the trials arising under the measure a man of consular rank should be the presiding officer⁴⁴. The choice of this officer was to devolve upon Pompey⁴⁵. Furthermore, there was to be a special panel of jurors, chosen by Pompey⁴⁶. Bills of this kind usually contained a statement of the penalty to be assessed, in the event of a conviction under the terms of the law. In this case Asconius merely gives the information that the penalty was more severe than that under the older laws⁴⁷. The ordinary penalty for murder was *aquae et ignis interdictio*, or banishment from Italy⁴⁸. Under the present law of Pompey, it is argued, confiscation of the property of convicted persons must have been linked with banishment, for we know that Milo's property was confiscated after his conviction, or at least was put up at auction and sold, after his departure from Rome. But this is not conclusive, for Milo was heavily in debt, and the sale may have been due to the clamor of his creditors. It is certain that at least part of the proceeds of the sale was devoted to paying off some of his debts. This could scarcely be done if the property were now in possession of the state⁴⁹.

³³Asc. 35. ³⁴Asc. 35. ³⁵Asc. 37; Plutarch, Pompey 54, etc.

³⁶It is also the first recorded instance of the appointment of a consul without a previous vote of the *comitia centuriata*. Such is the conclusion to be derived from Asconius and Plutarch; compare Zumpt, *Criminalrecht*, II, 2, 411. But the words of Dio Cassius, 40. 50, might indicate that an election had been held; see Greenidge, *The Legal Procedure of Cicero's Time*, 574; Clark, *Introduction*.

³⁷Asc. 37, Milo 15 (the references to the Milo are to the sections, i. e. the subdivisions of the chapters).

³⁸Asc. 39.

³⁹Milo 22.

⁴⁰Asc. 39.

⁴¹Asc. 37.

⁴²Mommsen, *Strafrecht*, 632, 650; Digest 48. 9. 1.

⁴³Ad Att. 5. 8. 2; Clark, *Introduction*.

³³Asc. 33.

³⁴Asc. 34.

³⁵Asc. 34. ³⁶Asc. 35; Plutarch, Pompey 54.

³⁷See Asc. 34, and Comm. on §12. ³⁸Asc. 38.

According to the reformed penal code of Sulla, the punishment for murder was confiscation of property and banishment²⁰, but Pompey, probably in the year 55, had lessened the penalty. The argument of some scholars is that he now reverted to the earlier and more severe penalty, during the enforcement of his special legislation. The second law proposed by Pompey, and passed by the senate, was one to institute an inquiry into bribery at elections. That this law was to be retroactive is certain²¹, but how far into the past its operation was to extend has been much disputed. The penalty for *ambitus*, under a law of Cicero, was banishment for ten years, but, as Pompey intended the punishment to be more thoroughgoing, it may be that his law prescribed banishment for life²².

Both bills were attacked vigorously by Caelius, a tribune, who was acting in the interest of Milo. His ground for attack was that they were *privilegia*, or bills aimed at particular persons, a thing prohibited by the XII Tables²³. But Pompey threatened Caelius with force if he did not cease from his opposition, and the bills passed. Milo was now indicted under four distinct laws: under the new law *De Vi* for the murder of Clodius; under the older law *De Vi* for rioting in the streets by means of an armed band of followers; under the new law *De Ambitu* for bribery in connection with his recent canvass for the consulship; and under the law *De Sodaliciis* for the employment of guilds, or unions, to further his candidacy for the consulship²⁴. Only the first of these concerns the case in hand.

The trial took place early in April, but the exact date is much disputed²⁵. The uncertainty is the result of discrepancies and obscurities in the account of Asconius. It is clear that the trial began on April 4²⁶, and the case *De Ambitu* was called for the same day. Now the speech of Cicero for the defense was delivered on the last day of the trial²⁷, and is stated by Asconius to have been delivered on April 8²⁸, but the date he assigns in another passage to the last day of the trial is corrupt in the manuscripts. However, if the two dates clearly stated are accepted, the conclusion would be that the trial lasted five days, namely from the fourth to the eighth of April. But the account of the trial itself indicates that only four days elapsed, that is, three days were devoted to the hearing of evidence, and the fourth to the selection of the jury, and to summing up by the attorneys²⁹. The account of Asconius

is, briefly, as follows. During the first day of the trial there was great uproar and confusion in the forum while the witnesses for the prosecution were being cross-examined. For the remainder of the trial Pompey maintained order by means of an armed guard; so for two days the evidence was heard in silence. When the court was dismissed at the end of the last day set for hearing evidence, a *contio* was addressed by Plancus in an inflammatory speech, in which he urged all the people to be present to influence the jury against Milo. Cicero says that this *contio* was held on the evening before he spoke in behalf of Milo³⁰. On the following day the jury was selected and speeches were given for the prosecution and the defense³¹. Those who assume that five days were occupied base their account of the trial on the explanation given by Asconius of the terms of the law of Pompey. The whole passage is worth citing: *citati deinde testes secundum legem quae, ut supra diximus, iubeat, ut prius quam causa ageretur testes per triduum audirentur, dicta eorum iudices consignarent, quarta die adesse omnes in diem posterum iuberentur ac coram accusatore ac reo pilae, in quibus nomina iudicum inscripta essent, aequarentur; dein rursus qui numerus cum sorte obtigisset, ei protinus sessum irent*³². Thus three days were occupied in taking the evidence, which was read over to a *consilium* (contrast *omnes* below), perhaps composed of a portion of the *iudices*. On the fourth day (*quarta die*) all were ordered to be present on the fifth day (*in diem posterum*), and the lots were inspected to see that there was neither fraud nor mistake. On the fifth day (*dein rursus postera die*) a jury of 81 was selected by lot and the arguments of counsel were heard. On the other hand *quarta die* may qualify *adesse* rather than *iuberentur*, and the passage would then be translated 'were ordered to be present on the fourth day, i. e. the next day'. In that case *postera die* would also mean the fourth day. If we assume that the trial lasted five days, we are compelled also to assume that nothing took place on the fourth day except the scrutinizing of the lots. It might be suggested that a day was granted to counsel to prepare their arguments, but this does not harmonize with the later complaint of Caesar, that the hearing of cases during this year was unduly hastened. On the whole, the weight of evidence seems in favor of the shorter period.

The presiding officer, called *quaesitor*, was L. Domitius Ahenobarbus, a man of consular rank, a prominent aristocrat, and the brother-in-law of Cato³³. The jury was selected in a most unusual manner. By the Lex Aurelia an ordinary jury was composed of men of three classes, senators, equites, and tribuni aerarii. But in the cases arising under the special legislation of this year the choice of the panel

²⁰Digest 48. 8. 3.5; *deportatio et omnium bonorum ademptio*.
²¹A good account of this measure, with discussion of the statements of Appian relating thereto, will be found in Clark, Introduction, XII.

²²So Mommsen, *Strafrecht*, 874, thinks, but the evidence is slight.

²³Asc. 37. Whether these measures were unconstitutional or not, there were several precedents for them.

²⁴Asc. 54. This seems the best distinction among the four accusations.

²⁵The matter is well treated by Clark, pp. 127-129; Greenidge, *Legal Procedure*, 393 ff.

²⁶Asc. 40: prid. Non. April.

²⁷Asc. 41: iudici summus.

²⁸Asc. 41.
²⁹Asc. 43, 52.

³⁰Asc. 31: a. d. VI Id. April.

³¹Milo 3: hesterna . . . contione; compare

³²Clark causes the discrepancies in dates given by Asconius to disappear by changing a. d. VI Id. April. to a. d. VII Id. April. in the text.

³³Asc. 40.

³⁴Asc. 40; Milo 22.

was given to Pompey, and he defined the mode of selection of the jurors. The panel consisted of 360 members, but was composed of men of the three classes named. It seems that their presence was not required at the hearing of evidence, but during this time the quaesitor had a special consilium, who may have had the functions of a modern grand jury. It is uncertain whether the members of the consilium were also members of the final jury, but Caesar later complained that the jurors who rendered verdicts under Pompey's laws were not those who had heard the evidence, and he attacked the legality of their decisions on this ground³⁴. Many who had been thus condemned were afterward pardoned.

On the last day of the trial 81 were chosen by lot out of the total of 360 jurors. Then, after the arguments of counsel, the two parties to the case rejected 30 by peremptory challenge, leaving a final jury of 51³⁵. There remained 18 senators, 17 *equites*, and 16 *tribuni aerarii*³⁶. The names of only three members of the jury are known to us, Velleius, Cato, and Popilius. It was current gossip in Rome that in the selection of jurors Cicero's friends were omitted from the initial list³⁷. But if this is true, Cicero with rare boldness endeavors to placate them by calling them *ex florentissimis ordinibus ipsa lumina*, an expression with which Asconius is in agreement³⁸.

The charge against Milo was that he maliciously procured the death of P. Clodius Pulcher on January 18, on the Appian Way, in the vicinity of Bovillae. It was not charged that Milo struck the mortal blow, nor that he came into active conflict with Clodius. Milo was held responsible for the acts of his slaves, and for the acts of those who were at that time under his orders. For the commission of a crime by a slave at his master's order the master was responsible, and the slave himself could also be prosecuted³⁹. After the trial of Milo, Saufeius, the captain of his band, was arraigned for participation in the murder of Clodius, but through the pleadings of Cicero and Caelius he escaped conviction by a majority of one vote⁴⁰. It is impossible to regard the conviction of Milo and the acquittal of Saufeius as both legal. One or the other was undoubtedly due to political, or emotional, causes.

Two sons of Appius Claudius, brother of Clodius, laid the information against Milo, and became the official prosecutors. The counsel for the prosecution were Appius Claudius, M. Antonius and P. Valerius Nepos⁴¹. The speeches for the prosecution are not preserved, but we can judge their contents and the nature of the pleadings from the rebuttal by the defense. There was no doubt that the slaying of Clodius had been accomplished by the followers of Milo, and no attempt was made to have it appear otherwise. The

question at issue was merely whether the killing of Clodius had been done in self-defense, or whether Milo was the aggressor in the fatal difficulty, and had plotted to bring it about. The first witness summoned was a Roman knight, Causinius Schola, a friend of Clodius, who had been with Clodius at the time of the affray. He testified that he had been with Clodius at the time of his death, and represented Milo as being the aggressor, and portrayed the action of Milo in the worst light. He was cross-examined by Marcellus, but the crowd of Clodian sympathizers became so noisy and aggressive that Marcellus and Milo implored the protection of the court. An appeal was made to Pompey, who promised to be present on the following day with an armed guard. This promise he fulfilled. Citizens of Bovillae testified as to the fight, and corroborated the report that the inn-keeper had been slain, the inn captured, and Clodius there slain. Evidence was given by Fulvia, the widow of Clodius, and by Sempronia, his daughter-in-law, which had a great effect upon the jurors, but we are not informed about the nature of their testimony. Vestal Virgins from Alba declared that an unknown woman came to the temple to pay a vow in behalf of Milo in recognition of his success against Clodius⁴².

What further evidence may have been offered against Milo is not related, but clearly the effort was made to show that Milo had long felt hostility toward Clodius, and to raise the presumption that Milo had deliberately planned to cause the death of Clodius. The slaves of Clodius were examined, and naturally deposed that Clodius had not conspired against Milo⁴³. But Cicero points out that, according to ancient law, the taking of the testimony of slaves against their masters was illegal, and the truth could not be expected from slaves when giving evidence for their masters, or against their masters' enemies⁴⁴. On the same principle the slaves of Milo could not be interrogated in reference to their master. However, an attempt was made to induce Pompey to enforce the production of Milo's slaves against him⁴⁵. Milo stated that because his slaves had fought so well for him he had manumitted them, and consequently he could not produce them for examination. There was no legal necessity for his resorting to manumission, but he probably felt that something of his own past might be divulged by his slaves, should they be put to the torture, that would be detrimental to his reputation, and turn the feelings of the jury, and the people, still more strongly against himself.

On the final day of the trial all three attorneys for the prosecution spoke, occupying among them the two hours allotted to the prosecution. They were orators

³⁴See Buckland, *The Roman Law of Slavery*, 114 ff., 700.

³⁵Asc. 54. ³⁶Asc. 42. ³⁷Asc. 41. ³⁸Milo 60.

³⁹On the competency of slaves as witnesses see Buckland, *The Roman Law of Slavery*, 86 ff.; Mommsen, *Strafrecht*, 412 ff. Prohibition of evidence of slaves for their masters did not arise until the early empire; see the Digest 48. 18, passim.

⁴⁰Asc. 40; Milo 56.

⁴¹Caesar B. C. 3. 1. 4.

⁴²Asc. 40. ⁴³Asc. 53.

⁴⁴Milo 21.

⁴⁵Asc. 39: *Album quoque iudicum, qui de ea re iudicarent, Pompeius tale proposuit, ut numquam neque clariores viros neque saniores propositos esse constaret.* Compare also Milo 105.

of reputation, and no doubt made use with rare skill of the evidence presented by their witnesses. They further introduced three points, which had little foundation in law, but which might have a material influence upon the feelings of the jury, if stated with rhetorical power. The first of these was that one who confessed to having committed homicide deserved death⁴¹. Under the American rules of evidence in criminal cases a confession, if made absolutely voluntarily, is admissible as evidence. But an uncorroborated confession is not sufficient to justify conviction. The *corpus delicti* must still be plausibly shown by other evidence. This consists in testimony that certain acts of the accused were directed against the person of the deceased, and that the death of the deceased was the result thereof. There is nothing to show that Milo had made a voluntary confession; he had simply not denied the patent fact that Clodius met his death at the hands of Milo's followers. The treatment of this question by Cicero indicates that the Roman law was precisely the same as the English and the American, and, therefore, it would still be necessary for the prosecution to show that Milo was actuated by malice, and that he was the aggressor in the fatal difficulty⁴².

The second point was that the action of the senate showed that its opinion was unfavorable to Milo⁴³. It had first passed the *senatus consultum ultimum*, thereby implying that Milo was a dangerous man, in whose case unusual precaution must be taken. Then, upon motion of Pompey, it had passed a bill creating a *quaestio extraordinaria*, although there already existed *quaestiones vel de caede vel de vi*⁴⁴. The Lex Plautia of 89 B. C. established a *quaestio perpetua de vi*. Thus the senate indicated its belief that through intimidation or bribery Milo, although guilty, would escape conviction at the hands of an ordinary jury.

As a third point the counsel for the prosecution maintained that the action of Pompey proved that he believed Milo guilty⁴⁵. His rogation showed his opinion on both the fact and the law, for he would not have introduced into the senate his bill demanding an investigation had he not felt that the killing of Clodius was a particularly atrocious matter. Drusus had been slain, and no extraordinary court was established; Africanus was slain, and an extraordinary court was not considered necessary. But the slaying of Clodius, on the Appian Way, and among ancestral monuments (for the road was built by his ancestors), was atrocious, and called for unusual treatment. There must be no means open for the murderer to escape conviction. Pompey showed his feeling also in the selection of jurors, for those were not included who were Cicero's friends.

The prosecution then rested its case, and the summing up for the defense began. The counsel for the defense were Hortensius, Marcellus, Calidius, Faustus

Sulla, and Cicero⁴⁶. Together they formed the most eminent group of forensic orators of the day in Rome. Cicero was chosen to make the sole speech summing up for the defense, but he was frightened by the hostile mob, and by the sight of soldiers surrounding the court, and made a miserable failure⁴⁷. The speech we have is not the speech he delivered, nor the one he prepared for delivery. Certain points in it seem clearly to have been suggested by the argument of counsel for the prosecution. The extant oration enjoyed an excellent reputation in antiquity⁴⁸, and has been greatly admired by modern lawyers.

(To be concluded)

DARTMOUTH COLLEGE.

R. W. HUSBAND.

REVIEWS¹

Aegean Days. By J. Irving Manatt. London: John Murray (1913). Reprinted by Houghton Mifflin Company: Boston (1914). Pp. xii + 405. \$3.00.

The English and American editions of this book are identical, except that the American issue has a little sketch map, which is not in the London work. The work contains a very attractive series of essays, some of which have already appeared in magazines, on the Aegean islands of Andros, Tenos, Naxos, Paros, Ceos, Lesbos, and Chios, though we miss many other important Aegean islands, such as Cos. There is also a chapter on Troy and on the island cruise to Aegina, Euboea, Delos, Myconos, Samos, which Dr. Dörpfeld used to conduct. From the title one would not suspect that the final chapters deal with Ithaca and Leucas and Dörpfeld's theory that Leucas is the Homeric Ithaca. The first chapter is dated in 1899, and the last in 1905; so that there are some inconsistencies between them. In fact, the main criticism to be made is that many of the twenty-eight chapters are a little antiquated, since they were written twenty years ago ("last year", on page 189, means 1892), and do not take account of recent excavations at Tenos, Delos, Paros, Samos, Oropus, etc. It surprises the recent visitor to Greece to read (141) that 350,000 drachmae is \$50,000, instead of \$70,000. Yet it is only just to say that in most cases a foot-note corrects the wrong statement in the text (compare pages 132, 167, 191, 214, etc.). Nor is much attention paid to recent publications. Inscriptions are often mentioned, but no reference is given to the *Inscriptiones Graecae* XII, where they are published. So, to cite only one instance, the Isis hymn mentioned on page 64 was well published in *Inscriptiones Graecae* XII, v, 739, as long ago as 1903; as early as 1896 the marble containing the hymn was cleaned of the whitewash mentioned by

⁴¹Asc. 35.

⁴²Asc. 42; Plutarch, Cicero 35; Dio Cassius 40. 54.

⁴³The speech delivered was also known in antiquity.

⁴⁴This review was in hand long before Professor Manatt's lamented death, but in the pressure of reviews on the space of THE CLASSICAL WEEKLY no place could be found for it before this issue. C. K.

⁴⁵Milo 7 ff.

⁴⁶Compare Greenidge, *Legal Procedure*, 464.

⁴⁷Milo 12 ff.

⁴⁸Milo 13.

⁴⁹Milo 15 ff.

Professor Manatt. The hymn does not date from the fourth or the third century B. C., but from about the time of Augustus; it was originally published in the English Classical Journal, not in the Classical Museum. Rather undue prominence is given to Andros, since the entire first part of the book (Chapters I-XXI) is given up to an account of an Andrian summer (1892) with excursions to some of the nearer Cyclades. Although this part is now somewhat superseded by Saucius's profusely illustrated work on Andros of 168 pages and 77 illustrations, it is still valuable not only to the general student but to the scholar who may some day excavate on Andros and write its final history.

Professor Manatt has a very happy English style, and combines in an unusual and attractive manner the historical, literary, archaeological and personal features of the Cyclades, in ancient, mediaeval, and modern times. He puts the Greek writers in their true topographical setting. His characterizations of Simonides (225 ff.) and Sappho (297 f.) are especially good, though Wilamowitz's Sappho und Simonides, and Miss Patrick's Sappho and the Island of Lesbos could not be used. Not all, however, would call Dionysios of Halicarnassus "another Dryasdust" (284). Professor Manatt displays great learning and a very wide knowledge of the continuity of the old and the new Hellenic culture. His book will appeal to all who desire a vital picture of the background of the many important historical and literary events which are associated with the Greek islands. It is full of good stories and accounts of interesting modern customs. In telling about the mutilation of a corpse in modern times, a parallel might have been drawn with the ancient practise of *μασχαλισμός* (compare Apollonius Rhodius 4. 477; Rohde, *Psyche*, I. 326). The idea (366) that the Olympic games were established on Mt. Olympus is not limited to freshmen, but is wide-spread. I heard it the other day in a sermon and it occurs in books like Miss Whiting's *Athens*, the *Violet Crowned*. Only one who has lived long in the Greek atmosphere and learned to understand the Greeks, ancient and modern, could give us such vivid word-pictures as does Professor Manatt, who was consul for four years at Athens, and who visited Greece many times, and who by long teaching and study drank deeply of Hellenic culture from Homer to the modern Greek ballad. We congratulate Brown University on producing in the Classical Department such ideal books of travel as the Allinsons' *Greek Lands and Letters*, Mrs. Allinson's *Roads from Rome*, and Manatt's *Aegean Days*. These books, to which Mrs. Bosanquet's *Days in Attica* is a recent addition from Great Britain, are not merely popular, but are full of sound learning and instructive.

Professor Manatt's book is unusually free from the errors which are so common in works of this kind. The fact that the book was printed in London, and the proofs corrected in Athens, probably accounts for the presence of a few minor slips.

JOHNS HOPKINS UNIVERSITY.

DAVID M. ROBINSON.

Architecture and the Allied Arts: Greek, Roman, Byzantine, Romanesque, and Gothic. By Alfred M. Brooks. Illustrated from Photographs. Indianapolis: The Bobbs-Merrill Company (1914). Pp. x + 258: 158 Illustrations. \$2.50.

Professor Brooks, of the University of Indiana, in a volume entitled *Architecture and the Allied Arts* has given to the general public a certain amount of information about ancient and medieval architecture and none at all about the allied arts except sculpture. The title is thus quite misleading. With regard to the text it may be said that it appears to be made up of lectures to College students, and, as the average College student is deplorably ignorant about art, the treatment is correspondingly elementary. The critical appreciations are based on the standard text-books, and there is no evidence of first-hand acquaintance with the buildings described, or of personal impressions or of original reasoning upon the facts presented. The illustrations are excellent, but most confusingly arranged, without regard to the adjacent text or even to numerical sequence, making references to them in the text almost useless. It surely was due to an oversight—one cannot venture to charge it to ignorance—that on page 53 the plan of the pseudo-dipteral temple at Selinus was inserted as a plan of the Parthenon!

Professor Brooks is an enthusiastic admirer of Viollet-de-Duc, whom he seems to consider the first and sole reviver of interest in medieval art; Pugin and Button and Willis, du Sommerard and Baron Taylor seem to have been quite overlooked in thus giving all the credit to the author of the *Dictionnaire Raisonné*! One could wish that he had followed the Frenchman's example in logical arrangement or due development of his subject. The matter is arranged in neither a clearly analytical nor a chronological sequence, and there results a confusion of plan paralleling the singular confusion of the illustrations.

In the discussion of the classical prelude to medieval art, architecture and sculpture are treated not as allied but as wholly distinct arts. We may be thankful to Professor Brooks for refusing to hold Roman architecture—as do so many who repeat out-of-date traditional estimates—to be a mere copying and debasement of Greek architecture. The Roman achievement in original planning and in grandiose construction is suitably acknowledged.

It is with regret that one must pronounce that this well-meant attempt at popularizing the fine arts is on the whole a mistake. The author's knowledge of construction is incomplete—or he would not, among other errors, have declared that the arch and post and lintel are the only possible forms of construction, ignoring alike the truss and all cohesive constructions; nor would he have defined the pendentive as a "bracket" of masonry. Such errors go with failure to grasp the true significance of architectural developments. The medieval allied art of stained glass is ignored, and its profound and revolutionary influence on Gothic style

development and construction is not referred to. The book is a handsome and well-written volume.

COLUMBIA UNIVERSITY.

A. D. F. HAMLIN.

A GENEROUS OFFER BY HUNTER COLLEGE

Recently, in answer to requests from various High Schools in New York City and vicinity, the Department of Latin and Greek at Hunter College, New York City, issued a four-page circular giving information in regard to material possessed by the Department for the illustration of Greek and Latin studies. The Department cordially invites teachers of Latin and Greek (or of any allied subject) to make use of this material. Detailed information may be secured by correspondence with any member of the staff, especially with Professor G. M. Whicher. Appointments may also be made with members of the staff, for inspection of the material, or for conference concerning its use, to most advantage on Saturday mornings or on other days after two o'clock.

The available material includes in the first place some six hundred lantern slides, a limited number of Roman and Greek costumes, and a set of several hundred photographs on mounts eleven by fourteen inches, chiefly of Italian or Greek sites or ancient statuary. All of these things may be borrowed from the Department (with proper security). Or, classes may be brought to Hunter College; a room there fitted with stereopticon will be available. Directions will be given to those who wish to make Greek or Roman costumes for their own use. In certain cases, an instructor, or a properly qualified student, may be secured to visit the school and render assistance in details of making or wearing such costumes.

In the second place, the materials available include certain models, which cannot be moved, but which the members of the Department will be glad to exhibit and to explain to all interested. These models, in cement, clay, and plaster, illustrate a Roman house, a shrine of the household gods, the Forum Romanum as it existed about 100 A.D., Pliny's villa at Laurentum reconstructed after Cowan's plan, and a Roman camp.

Finally, the circular states that certain members of the staff of Hunter College are willing to give lectures without charge (in most cases illustrated with lantern slides) to Schools or School Clubs, on a variety of subjects. These subjects include Greek Painting; Greek Sculpture; Travel in Italy and Greece; Roman Life; Topography of Rome; A Journey across Crete; The Building Marbles of Rome; Along the Roman Wall; On the Road to Tibur; Pastoral Poetry.

C. K.

CLASSICAL ARTICLES IN NON-CLASSICAL PERIODICALS

American Historical Review—Oct., T. Frank, Roman Imperialism (W. L. Westermann); R. A. S. Macalister, The Philistines: Their History and Civilization (L. B. Paton); E. A. Loew, The Beneventan Script: A History of the South Italian Minuscule (C. H. Haskins); [Notes on recent publications

in the field of ancient history, pages 220-222].—Jan., Studi Siciliani ed Italoiti, Volume 1 (W. S. Ferguson); T. Déchelette, Manuel d'Archéologie Préhistorique Celtique et Gallo-Romaine. Tome II, Troisième Partie (P. N. Robinson) [This part deals with Archéologie Celtique ou Protohistorique. Second Age du Fer ou Époque de la Tène, from 500 B. C., i. e. with Celtic Civilization to the Christian Era]; E. G. Sihler, Cicero of Arpinum (P. F. Abbott); [Notes on recent publications in the field of ancient history, pages 447-449]. Athenaeum—Dec. 26, (A. B. Cook, Zeus: A Study in Ancient Religion, Vol. 1); Dr. Ingram Bywater (died Dec. 17, 1914).—Jan. 2, (Lang, Leaf, and Myers, The Iliad of Homer (re-published in Macmillan's Globe Library)).—Jan. 9, Music and its Rewards: A Latin Motto, R. H. Legge. Atlantic Monthly—Jan., To an Ancient Head of Aphrodite: A Poem, Katharine Butler. Bibliotheca Sacra—Jan., (W. L. Davidson, The Stoic Creed); (F. Cumont, Oriental Religions in Modern [sic] Paganism). Brickbuilder—Jan., The American Theater, Part I [deals with the Greek theater: well illustrated], Hugh Tallant. British Review—Jan., Nescioquid, MDCCCXV-MCMXV [two Latin epigrams on the present war]. Bulletin of the Geographical Society of Philadelphia—Jan., The Mountains of Greece, W. W. Hyde (to be continued). Contemporary Review—Jan., (P. S. Allen, The Age of Erasmus). Edinburgh Review—Jan., The Conception of Another Life, Gilbert Murray. Forum—Feb., A Defence of Liberal Education, R. B. Perry. Hibbert Journal—Jan., The Jews as Viewed through Roman Spectacles, H. A. Strong; R. B. Tollinton, Clement of Alexandria (M. B. Owen). Independent—Jan. 11, The Moving World [The Damon and Pythias story in moving pictures].—Jan. 25, The Glory that was Greece = (Miss Stephens, The Greek Spirit). Literary Digest—Jan. 2, Efficiency in Ancient Rome [From an article by W. Lewis, in Bulletin of the Society for the Promotion of Engineering Education: Marcus Aurelius 4.24]. Nation (New York)—Jan. 14, For "Melos" read "Belgium", W. C. Greene [Gilbert Murray's Euripides and his Age, 124-8, adapted]; The American Philological Association, C. Knapp.—Jan. 21, Shakespeare's Anthropophagi: The Source of the "Travel's History" of Othello, H. B. Lathrop [Pliny N. H. 7.8, summarized by Pierre de Changy, Lyons, 1551, translated by I. A., 1565 or 1566].—Jan. 28, The Original Odysseus = (J. A. K. Thomson, Studies in the Odyssey); Notes = (Lloyd, The Making of the Roman People; Richardson, Beginnings of Libraries, Vol. 2).—Feb. 4, Toilers of the Sea = (W. P. Mustard, Piscatory Eclogues of Jacopo Sannazaro).—Feb. 11, Interpretation by Conjecture = (P. M. Cornford, The Origin of Attic Comedy). Open Court—Jan., The House of Livia [Frontispiece]; Socrates, W. E. Leonard; Greece the Mother of all Religious Art [illustrated], P. Carus. Outlook—Jan. 20, Theocritus, Mrs. J. T. Fields [a poem]. Philosophical Review—Jan., C. Sentroul, Kant et Aristote (R. A. Tsanoff). Quarterly Review—Jan., Catullus at Home, Sir Archibald Geikie. Saturday Review—Dec. 26, (The Composition of the Iliad, A. Smyth). Spectator—Jan. 9, Suppressio Veri, L. M. Penn [Caesar, Bellum Gallicum 6.20]. Times (London) Weekly Edition—Dec. 25, Death of Mr. Ingram Bywater. A Great Humanist. Times (London) Weekly Edition, Literary Supplement—Jan. 22, (A. B. Cook, Zeus: A Study in Ancient Religion, Vol. 1). Times (London) Educational Supplement—Jan. 3, A Tribute from Italy [Greek version of poem by Anna Vivanti: Italy to King Albert of Belgium]; A Sidelight on "Teutonism", A. Shewan [German scholars and the Homeric Question]; The Cambridge Greek Testament = (Plummer, St. Mark; Murray, Ephesians; Blenkin, First Epistle of Peter)

THE CLASSICAL CLUB OF PHILADELPHIA

The Classical Club of Philadelphia held the 118th meeting of its long and successful career on Thursday, February 25. The paper of the evening was read by Professor Walter Woodburn Hyde, of the University of Pennsylvania. Professor Hyde, himself an enthusiastic mountaineer, read a most appreciative account of The Mountains of Greece. Forty-two members and guests were present, among them Professor Charles Knapp, who was elected to honorary membership in the Club. The next meeting will be held on March 26; at that time Professor Franklin Edgerton will discuss the Sanskrit Drama.

B. W. MITCHELL, Secretary.